United States Court of Appeals

for the Second Circuit

APPENDIX

No. 74-1286

United States Court of Appeals
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

THE NEWTON-NEW HAVEN COMPANY,

Respondent.

On Application for Enforcement of an Order of
The National Labor Relations Board

APPENDIX

ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570

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APPENDIX

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE NEWTON-NEW HAVEN COMPANY and UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL--CIO, CLC	Case Nos. 1--CA--9227 1--RC--12,519

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: The Newton-New Haven Company
Case Nos. " 1-RC-12,519 & 1-CA-9227

1.18.73	Petition filed.
2. 5.73	Notice of Representation Hearing, dated.
2.12.73	Hearing opened.
2.13.73	Order Rescheduling Hearing, dated.
2.21.73	Hearing closed.
3.14.73	Regional Director's Decision and Direction of Election, dated.
4.13.73	Notice of Election.
4.13.73	Tally of Ballots.
4.13.73	Certification on Conduct of Election dated.
4.19.73	Employer's Objections to Conduct Affecting Results of Election dated.
5.18.73	Regional Director's Supplemental Decision and Certification of Representative dated.

5. 29. 73	Employer's Exceptions to Regional Director's Supplemental Decision and Certification of Representative dated.
6. 12. 73	Board's telegram denying Employer's Request for Review dated.
7. 19. 73	Charge filed.
8. 10. 73	Complaint and Notice of Hearing dated.
8. 22. 73	Respondent's Answer to Complaint dated.
8. 30. 73	Regional Director's Order Referring Motion to the Board dated.
8. 30. 73	General Counsel's Motion for Summary Judgment dated.
9. 12. 73	Board's Order Transferring Proceeding to the Board and Notice to Show Cause dated.
10. 5. 73	Respondent's Answer to General Counsel's Motion for Summary Judgment dated.
12. 12. 73	Board's Decision and Order dated.

[Dated 12/12/73]

[D--8206
North Haven,
Conn.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE NEWTON-NEW HAVEN COMPANY

and

Case 1--CA--9227

UNITED RUBBER, CORK, LINOLEUM
& PLASTIC WORKERS OF AMERICA
AFL--CIO, CLC

DECISION AND ORDER

Upon a charge filed on July 19, 1973, by United Rubber, Cork, Linoleum & Plastic Workers of America, AFL--CIO, CLC, herein called the Union, and duly served on The Newton-New Haven Company, herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 1, issued a complaint on August 10, 1973, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on May 18, 1973, following a Board election in Case 1--RC--12,519 the Union was duly certified as the exclusive collective-bargaining representative of Respondent's

employees in the unit found appropriate;[1/] and that, commencing on or about July 2, 1973, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On August 22, 1973, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On August 30, 1973, counsel for the General Counsel filed directly with the Regional Director a Motion for Summary Judgment. By Order of the same date, the Regional Director referred the Motion to the Board which was filed on September 4, 1973. Subsequently, on September 12, 1973, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to Notice To Show Cause, called Answer to General Counsel's Motion for Summary Judgment.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

1/ Official notice is taken of the record in the representation proceeding, Case 1--RC--12,519, as the term "record" is defined in Secs. 102.68 and 102.69(f) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938, enfd. 388 F. 2d 683 (C.A. 4, 1968); Golden Age Beverage Co., 167 NLRB 151, enfd. 415 F. 2d 26 (C.A. 5, 1969); Intertype Co. v. Penello, 269 F. Supp. 573 (D.C. Va., 1967); Follett Corp., 164 NLRB 378, enfd. 397 F. 2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA.

Ruling on the Motion for Summary Judgment

In its answer to the complaint and response to the Notice To Show Cause, the Respondent attacks the validity of the election, which resulted in the Union's certification, because of the conduct alleged in its objections and because of the Board's failure to grant Respondent's request for a hearing on the objections. The General Counsel contends that the Respondent is attempting to relitigate issues which were or could have been raised and determined in the underlying representation case and this the Respondent may not do herein. We agree with the General Counsel.

Our review of the record herein reflects that, pursuant to the Regional Director's Decision and Direction of Election in Case 1--RC--12,519, an election was conducted on April 13, 1973, in the appropriate production and maintenance unit of the Respondent's employees at its North Haven, Connecticut, facility. The tally of ballots showed that, of approximately 183 eligible voters, 87 cast votes for, and 82 against, the Union and 2 votes were challenged. Thereafter, the Respondent filed timely objections to the conduct affecting the results of the election, alleging, in substance, that (1) the Union threatened, intimidated, and coerced employees; (2) the Union made material misrepresentations of fact to influence the election; (3) the Union made promises of benefit with respect to dues and initiation fees; (4) a union representative, acting as an official observer, engaged in improper electioneering; and (5) non-English-speaking employees were not given proper notices of elections and ballots. After investigation, the Regional Director, on May 18, 1973, issued a Supplemental Decision and Certification of Representative in which he overruled the objections as not being meritorious and certified the Union. With respect to the conduct alleged in Objection 4, the Regional Director concluded that,

assuming the union observer engaged in the conduct attributed to him, it did not constitute electioneering. The Respondent filed a timely request for review, called exceptions to the Regional Director's Supplemental Decision, excepting to the Regional Director's overruling Objection 4 as lacking in merit and requesting either that the election be set aside or that a hearing be directed on the conduct of the union observer alleged in that objection. On June 11, 1973, the Board denied the request for review as it raised no substantial issues warranting review.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[2/]

All issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. We shall, accordingly, grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

2/ See Pittsburgh Plate Glass Co. v. N. L. R. B., 313 U. S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

Findings of Fact

I. The Business of the Respondent

The Respondent, a Connecticut corporation, has maintained its principal office and place of business at 6 Middletown Avenue, North Haven, Connecticut, where it is now and continuously has been engaged at said facility in the manufacture, sale, and distribution of metal die castings and related products. Annually, the Respondent receives goods valued in excess of $50,000 at its North Haven, Connecticut, plant, from points located outside the State of Connecticut.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

United Rubber, Cork, Linoleum & Plastic Workers of America, AFL--CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees including regular part-time maintenance employees, hot inspector clerks, production clerks, inspectors, stockroom clerks,

timekeepers and group leaders, at the Employer's North Haven, Connecticut, location, but excluding quality control clerk, draftsmen, time study employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

2. The certification

On April 13, 1973, a majority of the employees of Respondent in said unit, in a secret ballot election conducted under the supervision of the Regional Director for Region 1 designated the Union as their representative for the purpose of collective bargaining with the Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on May 18, 1973, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about May 18, 1973, and at all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about July 2, 1973, and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that the Respondent has, since July 2, 1973, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees

in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785; Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229, enfd. 328 F. 2d 600 (C. A. 5), cert. denied 379 U. S. 817; Burnett Construction Company, 149 NLRB 1419, 1421, enfd. 350 F. 2d 57 (C. A. 10).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. The Newton-New Haven Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Rubber, Cork, Linoleum & Plastic Workers of America, AFL--CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees including regular part-time maintenance employees, hot inspector clerks, production clerks, inspectors, stockroom clerks, timekeepers and group leaders, at the Employer's North Haven, Connecticut, location, but excluding quality control clerk, draftsmen, time study employees, office clerical employees, professional employees, guards and supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since May 18, 1973, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about July 2, 1973, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, The Newton-New Haven Company, North Haven, Connecticut, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Rubber, Cork, Linoleum and Plastic Workers of America, AFL--CIO, CLC, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees including regular part-time maintenance employees, hot inspector clerks, production clerks, inspectors, stockroom clerks, timekeepers and group leaders, at the Employer's North Haven, Connecticut, location, but excluding quality control clerk, draftsmen, time study employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understand is reached, embody such understanding in a signed agreement.

(b) Post at its North Haven, Connecticut, facility copies of the attached notice marked "Appendix."[3/] Copies of said notice, on forms provided by the Regional Director for Region 1, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

3/ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(c) Notify the Regional Director for Region 1, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D. C., December 12, 1973

Edward B. Miller, Chairman

John H. Fanning, Member

Howard Jenkins, Jr., Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Rubber, Cork, Linoleum & Plastic Workers of America, AFL--CIO, CLC, as the exclusive representatives of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All production and maintenance employees including regular part-time maintenance employees, hot inspector clerks, production clerks, inspectors, stockroom clerks, timekeepers and group leaders, at the Employer's North Haven, Connecticut, location, but excluding quality control clerk, draftsmen, time study employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

THE NEWTON-NEW HAVEN COMPANY
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Bulfinch Building, 15 New Chardon Street, Boston, Massachusetts 02114, Telephone 617--223--3300.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE NEWTON-NEW HAVEN COMPANY

Employer

and

Case No.
1-RC-12,519

UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC

Petitioner[1/]

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing, are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.

Upon the entire record in this case, the Regional Director finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organization(s) involved claim(s) to represent certain employees of the Employer.[2/]

1/ The name of the Petitioner appears as amended at the hearing.

2/ Nutmeg Local 745 & United Paperworkers International Union, AFL-CIO-CLC was permitted to intervene on the basis of a showing of interest.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:[3/]

> All production and maintenance employees including regular part-time maintenance employees[4/], hot inspector clerks[5/] production clerks[6/],

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3/ The Employer is a Connecticut corporation engaged in the manufacture, sale and distribution of aluminum and zinc die castings. The unit is basically in accord with the positions of the parties except for the placement issues discussed infra and consists of approximately 200 employees.

4/ The Employer contends that two part-time maintenance employees should be included whereas the Petitioner and Intervenor took no position, leaving the determination of unit placement to the Regional Director. Michael Cusanelli and Peter Hronis work five days a week averaging about 20 hours a week. They are employed on the second shift performing janitorial maintenance work under the supervision of Building maintenance Foreman Anthony Gerisi. Cusanelli and Hronis perform the same work as unit employees in their department and are regular part-time employees. They are therefore entitled in the unit. Display Sign Service, Inc., 180 NLRB 49, 50.

5/ Pursuant to the agreement of the parties and the record as a whole, the hot inspector clerks are included in the unit.

6/ The parties disagree as to the unit placement of production clerks. The Employer would include them as plant clericals whereas the Petitioner and Intervenor would exclude them. The two incumbents in this position, Steve Mussco and Nancy Haynes, are under the supervision of Joseph LaPaglie, Production Control Supervisor. They are paid on a non-exempt salaried basis and work in an office in the power press department. Their fringe benefits are similar to production employees. Mussco is responsible for expediting

inspectors[7], stockroom clerks[8], timekeepers[9] and group leaders[10], but excluding quality control clerk[11],

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6/ (Continued) material through the plant and investigating any production bottlenecks. The majority of Mussco's time is spent in production areas where he is in contact with production supervisors and employees. Haynes posts production orders, sales orders, and machine scheduling to various production control forms. Her duties require her to go into production departments to discuss matters with production employees. It appears that their duties are directly related to, and are an integral part of production functions. Mussco and Haynes are found to be plant clericals and are included in the unit. Barber-Colman Company, 130 NLRB 478, 479-480; Century Electric Company and Century Foundry Company, 146 NLRB 232, 243.

7/ The parties disagree as to the unit placement of Charles Gouvier, who is classified as an inspector. The Employer would include him in the unit whereas the Petitioner and Intervenor would exclude him as a technical employee. Gouvier is hourly paid, enjoys the same benefits as other unit employees and is under the supervision of Joseph Grecco, the Quality Control Manager. He works in the same office area as Grecco. He performs tests on the first piece and last piece die castings to determine if they conform to customer specifications. He performs these tests with micrometers, verniers, shadowgraph machines and other instruments and does, on occasion, go out to the production area to examine a problem. Although it cannot be determined from the record whether or not he is a technical employee, it is clear that his duties constitute an integral part of the production process. In view of this fact and the fact that he enjoys the same benefits as unit employees and is hourly paid, it is found that Gouvier shares a sufficient community of interest with production and maintenance employees to warrant inclusion in the unit. Dundee Cement Company, 170 NLRB 422, 424-425; Main Sugar Industries, Inc., 169 NLRB 186. This conclusion is not changed even if he is a technical employee. Main Sugar Industries, Inc., supra.

draftsmen[12], time study employees[13], office clerical employees, professional employees[14], guards and supervisors[15] as defined in the Act.

8/ The parties agree to the inclusion of the job classification of stockroom clerks. However, the Petitioner and Intervenor question whether Myron Schoonmaker, the stockroom clerk on the first shift, should be included inasmuch as he is a salaried employee due to his former status as a supervisor in the power press department. Because of his health he was transferred into the stockroom where he performs the same work as the second shift stockroom clerk, Ronald Kirk, who is admittedly in the unit. These employees issue various types of production equipment and materials to employees. Although Schoonmaker is salaried, he is paid less than when he was a supervisor. The record fails to disclose that he possesses any authority indicative of supervisory status. Since he performs the same work as another employee admittedly in the unit and is under the same supervision, he is included in the unit.

9/ The Employer would include the two timekeepers as plant clericals whereas the Petitioner and Intervenor would exclude them. Although they are supervised by the Payroll Supervisor, they work in the plant area at desks between the miscellaneous machines and power press departments and works the same hours as production employees. They are paid on a non-exempt salaried basis and receive benefits similar to production employees. They collect employees' time cards and put new ones in the rack. They record employees' down time, absenteeism, and maintain all time records for employees on incentive and piece rate jobs as well as recording time for day workers. Inasmuch as they perform all their duties in the plant area, are in contact with production employees and their work is closely related to production functions, the timekeepers are included in the unit. General Electric Company, Pinellas Peninsula Plant, 127 NLRB 919, 921; Century Electric Company and Century Foundry Company, supra, 242-243.

10/ Pursuant to the agreement of the parties and the record as a whole, the following employees classified as Group

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed

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10/ (Continued) Leaders are found not to be supervisors and are included in the unit: James Vitale, Jessie Stanton, Charlie Borletta, Renny Demattie, Elizar Diaz, Ralph Felicello, Mr. Reamer, Frank Santarcangeio, Orlando Ruptola, Simon Ide, Charles Terzers, Louis Fappiano, Robert Amuro, Michael Dubecky, Nicholas Rivera, Clement Beamor, Tony Pascucelli, Tony Acri, Russ Sperry, Laroy Earl, and Matthew Vscilla.

However, the Employer would include Joseph Dattilo, who is classified as a Group Leader, whereas the Petitioner and Intervenor contend he should be excluded as a supervisor. Dattilo is employed on the second shift in the Finishing Department under the supervision of Manuel Rodriguez. Dattilo works in both the miscellaneous machines and power press departments. Dattilo transmits assignsments to employees he receives from Rodriguez who lays out all work to be performed on the second shift. Dattilo also will instruct new employees and answer any questions or try to resolve production problems which may arise. Dattilo has no authority to hire, fire, or discipline employees, effectively recommend such action, or otherwise affect the employment status of any employee. If any personnel problems arise, Datillo either contacts Rodriguez or the Die Casting Department foreman on duty. It is concluded from the record as a whole that Dattilo does not possess any supervisory authority. Therefore, he is included in the unit. UTD Corporation (Union-Card Division), 165 NLRB 346, 347. Although there was testimony that Dattilo may allow employees to leave early, it appears that he has been routinely instructed to allow employees who are sick to leave early. In addition, when employees leave early for other reasons Dattilo does not have the

during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced

10/ (Continued) authority to permit this. He either checks with Rodriguez or leaves a note for him advising him of that fact. In any event, even if Dattilo has allowed employees time off, authority to grant time off is insufficient to establish supervisory status. Corey Brothers, Inc., 162 NLRB 1253, 1257, fn. 12; Cosley-Hodges Milling Company, 170 NLRB 1137, 1138.

The Employer would include Leo Damato whereas the Petitioner and Intervenor leave his unit placement to the Regional Director to decide because he has substituted for Manuel Rodriguez in the latter's absence. Damato is a Group Leader in the Power Press Department on the first shift. About four or five months ago, Damato was designated as being in charge while Rodriguez was out. The length of time of this substitution is not clear from the record. However, it is clear that when Rodriguez returned, Damato reverted to his position as Group Leader with identical duties as all others in that classification. Damato has no authority to hire, fire, or discipline employees or in any way affect the employment status of any employee. On the basis of the record as a whole, Damato is found not to be a supervisor and is included in the unit. R. L. Downing, Inc., 127 NLRB 288, 289.

11/ The parties disagree as to the unit placement of Helen Craine who is salaried as a quality Control clerk. She is under the supervision of Joseph Grecco, Quality Control Manager. She is paid on a non-exempt salaried basis. She works at a desk between the offices of Grecco and Director of Manufacturing Operation. She types correspondence relating to Quality Control, maintains and files quality control papers. She also does some typing for Graim. She has minimal contact with production employees and her duties do not take her to any production areas. It appears from the record that Craine is essentially an office clerical employee and is, therefore, excluded from the unit.

less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who

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12/ Pursuant to the agreement of the parties, the draftsmen are excluded from the unit.

13/ Pursuant to the agreement of the parties, the time study employees are excluded from the unit.

14/ Based on the agreement of the parties, and the record as a whole, Herman Randall, Industrial Engineer, is excluded as a professional employee.

15/ Based on the stipulation of the parties and the record as a whole, the following individuals are found to be supervisors and are excluded from the unit: Joseph LaPaglia, Production Control Supervisor; Joseph Grecco, Quality Control Manager; Richard Andree, Floor & Bench Inspection Foreman; Cornell Dolan, Supervisor of Hot Inspector Gate Breakers; Brian Quinn, Tool & Die Design Supervisor; Manuel Rodriguez, Finishing Department General Foreman; George Avala, Miscellaneous Machine Department Foreman; Charles Horvath, Production Manager; Basil Mangino, Clyde Jones, and Howard Bouccarant, Foremen of Die Casting Machine Operators; Richard Murray, Maintenance Department Foremen; Anthony Gerisi, Building Maintenance Foreman; Frank Damato, Shipping Department Foreman; Joseph Sapber, Tool & Die Shop Foreman; and Ken Ferris, Payroll Supervisor.

have been permanently replaced[16] those eligible shall vote whether (or not) they desire to be represented for collective-bargaining purposes by United Rubber, Cork, Linoleum & Plastic Workers of America, AFL-CIO-CLC; or by Nutmeg Local 745 & United Paperworkers International Union, AFL-CIO-CLC; or by Neither.

Dated March 14, 1973 /s/ Robert S. Fuchs

at Boston, Massachusetts Robert S. Fuchs
Regional Director, Region One

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[16] In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236; N. L. R. B. v. Wyman-Gordon Company, 394 U. S. 759. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election, in order to be timely filed, such a list must be received in the Regional Office, Bulfinch Building, Seventh Floor, 15 New Chardon Street, Boston, Massachusetts 02114, on or before March 21, 1973. Since the list is to be made available to all parties to the election, please furnish a total of three (3) copies. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Case No. 1-RC-12,519

Date issued April 13, 1973

Type of Election:
(Check one:)

☐ Stipulation

☐ Board Direction

☐ Consent Agreement

☒ RD Direction

(If applicable check either or both:)

☐ 3(b) (7)

☐ Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1.	Approximate number of eligible voters	183	
2.	Void ballots	0	
3.	Votes cast for Petitioner		87
4.			
5.			
6.	Votes cast against participating labor organization(s)		82
7.	Valid votes counted (sum of 3, 4, 5, and 6)		169
8.	Challenged ballots		2
9.	Valid votes counted plus challenged ballots (sum of 7 and 8)		171

10. Challenges are not sufficient to affect the results of the election.

11. A majority of the valid votes counted plus challenged ballots (item 9) has not been cast for:

Petitioner

For the Regional Director

/s/ Marvin Brewster

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For EMPLOYER	For PETITIONER
/s/ Sidney A. Coven	/s/ William H. Stapleton
Attorney	Field Representative
For	For

COMPANY'S OBJECTIONS TO THE ELECTION

LEPIE AND COVEN

Attorneys at Law
Ten Tremont Street
Boston Massachusetts 02108

April 19, 1973

Robert S. Fuchs, Regional Director
National Labor Relations Board
Bulfinch Building, 15 New Chardon Street
Boston, Massachusetts 02114

RE: The Newton-New Haven Company
Case No. 1-RC-12,519

Dear Mr. Fuchs:

The Employer herein hereby objects to the conduct of the election held on April 13, 1973 and requests that the results of the election be set aside and a new election conducted for the following reasons:

1. The Union and/or its representatives and supporters made threats and engaged in intimidation and coercion of employees, creating an atmosphere which made a free election impossible.

2. The Union made material misrepresentations of fact which were intended to influence the results of the election.

3. The Union made promises of benefits, including inter alia promises that persons signing union authorization cards and/or joining the Union before a given date would be charged only $5.00 per month as union dues with no initiation fee while persons joining after such date would be charged $7.50 per month dues plus an initiation fee.

4. A Union representative, acting as an official Observer during the election, engaged in prohibited conversations with employees during the election hours and while in the course of his duties as an official Observer and engaged in improper electioneering conduct.

5. Non-English speaking employees were not given proper notices of the election or ballots which were understandable to them.

A copy of this letter is today being served by regular mail postage pre-paid, on the Petitioner.

Very truly yours,

/s/ Sidney A. Coven
Sidney A. Coven
Attorney fpr
The Newton-New Haven Company

SAC:jmm

CC: United Rubber, Cork, Linoleum
& Plastic Workers of America, AFL-CIO
73 Tremont Street, Room 520
Boston, Massachusetts 02108

A. Iacobellis, Director of Ind. Relations
The Newton-New Haven Company
6 Middletown Avenue
North Haven, Connecticut 06473

* * * * *

SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a Decision and Direction of Election by the Regional Director dated March 14, 1973, an election was conducted on April 13, 1973 among certain employees of the Employer.[1/] The Tally of Ballots cast at said election is as follows:

Approximate number of eligible voters	183
Void ballots	0
Votes cast for Petitioner	87
Votes cast against participating labor organization	82
Valid votes counted	169
Challenged ballots	2
Valid votes counted plus challenged ballots	171

On April 19, 1973, the Employer filed timely Objections to Conduct Affecting Results of Election and served a copy thereof upon the Petitioner.

The Objections allege the following:

"1. The Union and/or its representatives and supporters made threats and engaged in intimidation and coercion of employees, creating an atmosphere which made a free election impossible.

"2. The Union made material misrepresentations of fact which were intended to influence the results of the election.

1/ The unit found appropriate is set forth below.

"3. The Union made promises of benefits, including inter alia promises that persons signing union authorization cards and/or joining the Union before a given date would be charged only $5. 00 per month as Union dues with no initiation fee while persons joining after such date would be charged $7. 50 per month dues plus an initiation fee.

"4. A Union representative, acting as an official Observer during the election, engaged in prohibited conversations with employees during the election hours and while in the course of his duties as an official observer and engaged in improper electioneering conduct.

"5. Non-English speaking employees were not given proper notices of the election or ballots which are understandable to them. "

Pursuant to Section 102. 69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned has conducted an investigation of the Objections. The investigation revealed the following:

Objection 1:

In support of this Objection, the testimony of one employee was offered. He states that when he went to his locker on the day of the election, he saw two stickers on the locker which said "No Riders" and another which said something like "if you don't vote for the union you'd lose your job. " There is no evidence that the Petitioner was in any way responsible for placing these stickers on the locker nor that it had any knowledge thereof.

This witness further stated that about three or four weeks before the election another employee told him "We'll get rid of you when the union comes in. " This statement was made as the witness was ripping up some union literature and said that he

wasn't going to join the union because he didn't want one. Apparently, there had been some disagreement between these two employees because the employee resented the fact that the witness had permission to sit down when he got tired. Permission had been granted as a result of an accident in which he had been involved. The employee to whom the statement was attributed denied making the statement. Even assuming the statement was made and the sticker posted, there is no evidence that the individual responsible possessed any seniority to act or speak in behalf of Petitioner or that his act was abandoned, certified by, or even known to Petitioner. Nor is there evidence that the statements were part of any concerted effort by Petitioner to intimidate the employees. The Board has held that unless conduct emanating from rank and file employees or third parties creates an atmosphere of confusion and/or fear of reprisal sufficient to interfere with the employees' freedom of choice rendering a free election impossible, it does not constitute interference that would warrant setting aside the election. The Great Atlantic & Pacific Tea Company, 120 NLRB 765; Poinsett Lumber and Manufacturing Company, 116 NLRB 1732; Diamond State Poultry Co., Inc., 107 NLRB 36. It is concluded that this was not the case here. Boyles Galvanizing Company of Iowa, 121 NLRB 952, 953; Rio DeOre Uranium Mines, Inc., 120 NLRB 91, 94; W. A. Ransom Lumber Company, 114 NLRB 1418, 1421; J. J. Newbury Company, 100 NLRB 84, 86. Accordingly, it is found that this Objection lacks merit.

Objection 2:

In support of this Objection, the Employer relies on two leaflets distributed by the Petitioner prior to the election. The Employer contends that one leaflet, distributed at the plant gate

on or about April 9, 1973 and attached hereto as Exhibit A, listing benefits included in comprehensive hospital plans negotiated by Petitioner, contains misrepresentation of fact. However, investigation revealed that the items enumerated on this leaflet are, in fact, contained in various hospital plans included in collective bargaining contracts the Petitioner has with several Employers, including the Goodyear Tire & Rubber Company, The Armstrong Rubber Company, Firestone Tire & Rubber Co., covering plants throughout the country. Therefore, it is found that this leaflet contains no factual misrepresentation.

The second leaflet, distributed by the Petitioner on or about April 11, 1973, introduced in support of this Objection is attached hereto and marked Exhibit 3. The Employer contends that this leaflet gave employees the impression that they could only vote in the election if they had signed authorization cards.

An examination of this leaflet does not sustain this contention. The phrase "Didn't sign a card" is followed by the statement, "You can still vote" indicates that all employees had a right to vote. Moreover, the Employer, on April 10, 1973, sent a letter to employees with a three page attachment with questions which had arisen during the campaign and answers thereto. The fifth of these questions is as follows:

"Question: I do not want to have anything to do with the United Rubberworkers -- not even vote in the election.

"Answer: Everyone should vote, particularly those who do not want the Union to speak for them. Remember, if the Union gets in it will speak for all employees, even those who voted

"Answer (Continued)
against it or did not vote at all. If you do not vote, you may, in effect, be casting a ballot for the Union."

An examination of the above shows that the Employer was encouraging all employees to vote whether or not they signed cards. It is clear that no ambiguity existed in the minds of the employees as to their right to vote being conditioned on having signed an authorization card. Moreover, if any doubt did exist, employees had ample time to seek clarification as to their right to vote. In view of the above, it is found that this Objection lacks merit.

Objection 3:

No evidence was introduced by the Employer in support of this Objection and investigation failed to reveal any evidence in support thereof. Therefore, it is found to lack merit.

Objection 4:

In support of this Objection, the Employer asserts that Juan Vega, one of the Petitioner's observers, engaged in improper electioneering and acted contrary to the Board Agent's instructions. Testimony was offered by witnesses testifying for the Employer that when Vega and the Employer's observer went to the various departments during the afternoon session to notify the foremen to release employees to vote, Vega, at one, point, left the Employer observer and walked around the Casting Department. The employer's observer states he was gone for about a minute or so.[2/]

2/ A foreman who says he saw Vega walking through the Casting Department says he was gone for about three minutes.

She also states that during the afternoon session, Vega spoke to employees in the Die Casting and Power Press Departments in Spanish.[3/] He was also heard telling a couple of employees to go vote, and was observed talking to the other employees but what was said was not overheard. In addition, he was observed talking to two employees who were ineligible to vote. Despite admonition by a foreman who observed this conduct, to stop conversing, Vega allegedly continued to walk around. Vega denied leaving the Employer's observer and states that during the afternoon polling time he spoke to only one employee in English, asking him if he had voted. During the evening voting period, Vega left the cafeteria, where the polling was taking place, and was observed down the hall talking to one employee who already had voted. He says that on this occasion two employees asked him where they could get coffee since the door to the cafeteria normally used for such purpose was closed. Vega referred them to the Board Agent to inquire about going in through the other door. The Board Agent had to order Vega back into the cafeteria.

Even assuming Vega engaged in the conduct attributed to him, there is no evidence that the conversations he had with employees constituted electioneering. Although the Employer contends that Vega's conduct while he was walking around the Casting Department alone, violated the "integrity" of the election because what he did while alone, is not known, it is found that the time he was away from the Employer's observer, estimated to be from one to three minutes, would preclude him from having any substantial conversations with anyone. Moreover, the conversations

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3/ The Employer's observer states that she does not understand Spanish.

about which the Employer's witnesses testified he had, do not show any improper conduct. Even if he did have conversations in Spanish, which the Employer's observer did not understand, a determination could have been made what if fact was said inasmuch as at least one foreman interviewed could speak Spanish and the employer could have determined if Vega engaged in improper electioneering.

The conduct attributed to Vega does not fall within the rule laid down by the Board in Milchem, Inc., 170 NLRB 162, in which the Board held that conversations between representatives or agents of either party with prospective voters waiting in line to vote or in the polling area, without regard to the contents of the conversations, constituted conduct which in itself necessitated the setting aside of the election.[4/] In the instant case, however, Vega did not have any conversations with prospective employees who were in the polling area or waiting in line to vote. The employees he talked with in the evening had already voted and the conversation was totally unrelated to the election. Therefore, the Milchem rule does not apply. See Harold W. Moore, d/b/a Harold W. Moore & Son, 173 NLRB 1258, Marvil International Security System Service, Inc., 173 NLRB 1260.

Since there is no evidence that Vega engaged in any improper electioneering it is found that this Objection lacks merit. The Claussen Baking Company case[5/] cited by the Employer is

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4/ The Board has held that the Milchem rule also applies to conversations engaged in by union or management observers. See General Dynamics Corporation, 131 NLRB 874, 875.

5/ 134 NLRB 111.

inapplicable on its facts to the instant case. In the Claussen case, there was affirmative evidence that employees on their way to the polling place when they were within 15 feet of its entrance were subjected to improper electioneering.

Objection 5:

In connection with this Objection, it is noted that the Employer was on notice for several days prior to the election that the Notices and ballots would be printed only in English. No evidence was introduced that any confusion existed among any of the electorate or that any employee has claimed that his ballot, as marked, did not express his true intent. There was considerable discussion about the election prior to the date it was held and letters were distributed by the Employer in both Spanish and English. Most significantly, the Employer at no time made any request for bilingual ballots and did not raise the issue until after the election ended. Accordingly, this Objection is found to lack merit. Sears Engineers, Inc., 172 NLRB 514, Crafts Manufacturing Company, 122 NLRB 341, 342 Palm Container Corp., 117 NLRB 434, 435.

Having concluded that no merit attaches to any part of the Objections, they are overruled in their entirety.

CERTIFICATION OF REPRESENTATIVE

Pursuant to the authority invested in the undersigned by the National Labor Relations Board,

IT IS HEREBY CERTIFIED that United Rubber, Cork, Linoleum & Plastic Workers of America, AFL-CIO, CLC has been designated and selected by a majority of the employees in the unit found appropriate herein as their representative for the purposes of collective bargaining and that pursuant to Section 9(a)

of the Act, the said labor organization is the exclusive representative of all employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

THE UNIT: All production and maintenance employees including regular part-time maintenance employees, hot inspector clerks, production clerks, inspectors, stockroom clerks, timekeepers, and group leaders employed at the Employer's North Haven, Connecticut location, but excluding quality control clerk, draftsmen, time study employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

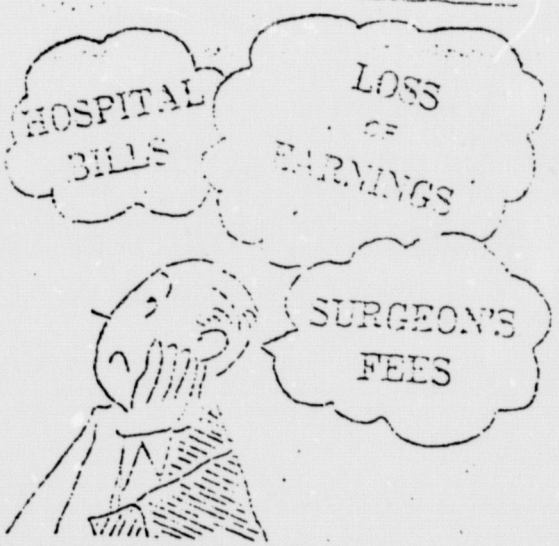
/s/ Robert S. Fuchs
Robert S. Fuchs,
Regional Director
National Labor Relations Board
First Region
Boston, Massachusetts 02114

Dated at Boston, Massachusetts
this 18th day of May, 1973. 6/

6/ Under the provisions of Sections 102.69 and 102.67 of the Board's Rules and Regulations, a request of this Supplemental Decision may be filed with the Board in Washington, D.C. This request must be received by the board in Washington, by May 31, 1973.

Supplemental Decision and
Certification of Representative Continued

SHING
Want
Make it So



UNFORTUNATELY THIS IS THE PREDICAMENT YOU USUALLY FIND YOURSELF IN WHEN YOU ARE ONLY PARTIALLY COVERED BY A HOSPITAL AND SURGICAL PLAN THAT JUST HASN'T KEPT PACE WITH THE RISING COST OF LIVING — IT'S TOUGH ENOUGH TRYING TO GET WELL WITHOUT THE ADDITIONAL WORRY OVER BILLS.

WELL! THE UNITED RUBBER WORKERS UNION HAS FULFILLED THIS WISH FOR ITS MEMBERS AND THEIR FAMILIES BY NEGOTIATING COMPREHENSIVE HOSPITAL PLANS —

AT NO COST TO THE EMPLOYEE

730 days semi-private room and board coverage.
Comprehensive coverage for miscellaneous hospital charges.
Comprehensive coverage for maternity care.
Full payment anesthesia and ambulance service.
Convalescent Nursing Home coverage.
Many other additional benefits are also included—
Surgical: Reasonable and customary fees will be paid on surgical procedures and subschedules on dentistry and chiropody.
All retired employees and their spouse are also covered under the U.R.W. Hospitalization and Surgical Plans.
Accident and Sickness insurance.
Payments up to $35.00 per week for 52 weeks.
$1.00 Deductible Prescription Drug Plan.

— DON'T JUST WISH

VOTE YES

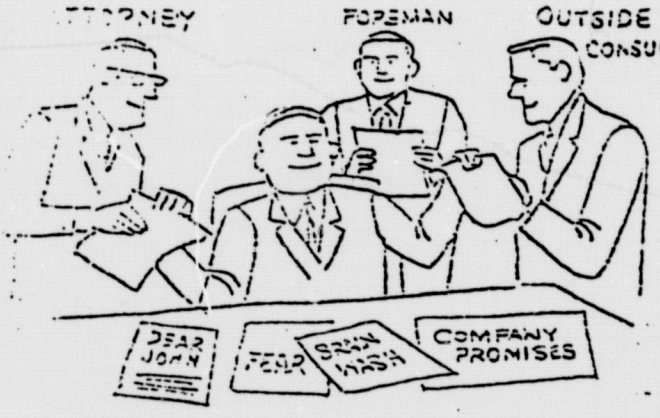
MAKE IT SO

ONLY COPY AVAILABLE Newton Organizing Committee

Supplemental Decision and
Certification of Representative Continued

YOU KNEW WHY!

YOU SIGNED THE CARD
YOU HAD GOOD REASON
FOR WANTING AND NEEDING A UNION



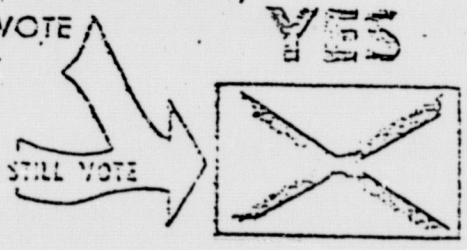
NOTHING HAS CHANGED

YOU HAVE HEARD THE BOSS' PROPAGANDA HE WANTS YOU TO FORGET THAT ORIGINAL REASON

REMEMBER THE REASON!

WHY YOU SIGNED THE CARD IN THE FIRST PLACE
AND AS YOU GO TO VOTE ON ELECTION DAY,
WE ARE CONFIDENT YOU WILL VOTE

YES



DIDN'T SIGN A CARD? HAVE A REASON NOW? YOU CAN STILL VOTE

UNITED RUBBER, CORK, LINOLEUM AND
PLASTIC WORKERS OF AMERICA, AFL-CIO

* * * * *

EMPLOYER'S EXCEPTIONS TO REGIONAL DIRECTOR'S SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVE

The Newton-New Haven Company, herein referred to as the Employer, by its undersigned Attorneys hereby excepts to that portion of the Regional Director's Supplemental Decision and Certification of Representative dated May 18, 1973, pages 4 to 6, in which he found that Objection 4 lacks merit, as well as to his action overruling said Objection and certifying the Union as collective bargaining representative.

The Employer states that the Regional Director's summary of the evidence produced by the Employer in support of this Objection is incomplete and erroneous and that his legal conclusions with respect to the actions of Union Observer Juan Vega are likewise erroneous and should be reversed by the Board. The Employer requests that a hearing be ordered at which testimony concerning Vega's conduct should be taken under oath and offers to prove at such hearing the facts as set forth below.

In view of the fact that the legal issue concerning the conduct of a Union Observer during the course of an election, which is presented here and discussed below, is one which has never been considered by the Board and in view of recent Board rulings discussed below concerning the Board's responsibility to protect its election processes against possible abuse, the Employer requests an opportunity to argue its exceptions orally before the Board.

BACKGROUND AND FACTS

The election herein was conducted on April 13, 1973 among the Employer's production and maintenance employees, totaling

approximately 183 eligible voters. The Tally of Ballots showed 87 votes for the Union, 82 against the Union and 2 challenged ballots. 1/

The election was held between the hours of 2:00 p. m. and 4:30 p. m. and 10:00 p. m. and 11:15 p. m. At the request of the Board Agent in charge of the election, the Employer and the Union each designated one Observer for the purpose of notifying the various foremen to release their employees to go to the Company cafeteria (where the election was being held) to cast their ballots in accordance with a predetermined schedule. The Union Observer designated for this purpose was Juan Vega. Both Vega and the Company Observer were given official Board badges to wear during the election, which they wore throughout the election hours, and were instructed by the Board Agent not to talk to anyone in the course of their duties other than the departmental foremen. Their instructions were to tell the foremen only that it was time for their employees to vote and not to engage in any other conversations.

Testimony submitted by the Employer, supported by sworn affidavits given to the Regional Office representative who made the investigation of the Objections, shows that on three different occasions during the afternoon voting 2/ when Vega and the Company Observer came to the Die Casting department in the course of

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1/ A shift of two "yes" votes would have affected the results of the election and would have made the challenged ballots determinative.

2/ The first occasion was some time between 2:00 and 2:30 p. m. and lasted about five minutes, the second about 2:30 p. m. and the third about 3:30 p. m., lasting somewhere around "a minute or so" or three minutes. The shift change occurred about 3:00 p. m. There are approximately 20 to 25 employees in the department on each shift.

their election duties, Vega violated his instructions and went unaccompanied through the department engaging in conversations with various employees most of whom had not yet voted.[3/] He continued to engage in this activity despite requests by the foreman and the Company Observer that he abide by the Board Agent's instructions and cease conversing with employees.

During the evening voting hours, Vega engaged in a conversation outside the cafeteria with an employee who had already voted. The Board Agent in charge of the election directed the employee to leave and Vega to cease engaging in such conversation. The employee and Vega walked down the walk, still conversing, and then Vega remained in the hall near the power press and machine departments.[4/] The Board Agent made at least two requests to Vega to return to the cafeteria. After each such request, Vega walked back toward the cafeteria and then again wandered down the hall toward the power press and machine departments. Finally, after a direct order from the Board Agent to remain seated in the cafeteria, Vega did so.

ARGUMENT

The Board has long been conscious of its obligation to safeguard its elections from conduct which inhibits the free choice of the voters and has been "especially zealous in preventing intrusions

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3/ The Employer has no knowledge of what was said during such conversations.

4/ The witness was unable to state whether Vega engaged in any other conversations while he was in that location he was then not in sight. It is therefore impossible to know whether at that time or later he had any conversation with prospective voters who might have been enroute to the cafeteria to vote.

upon the actual conduct of its elections." Clausen Baking Company, 134 NLRB 111, 112. In recent years such zealousness has resulted in the Board's enunciation of a new rule that conversations, regardless of their content, held with voters waiting in line to vote, or in the polling area, by a representative of one of the parties (Milchem, Inc., 170 NLRB 362; Star Expansion Industries Corp., 170 NLRB 364) or by one of the parties' observers (General Dynamics Corporation, 181 NLRB 874, 875) constituted conduct which requires the setting aside of the election. As the Board has stated in Rebmar, Inc., 173 NLRB 1434, the Board "has a responsibility to protect its processes against abuse or undersirable use" and "the Board should guard against having its prestige put to . . . possible abuse."

Here neither the Employer nor the Board can be sure whether or not Vega's continued and deliberate disregard of the Board Agent's instructions not to converse with employees while notifying their foreman to release them for voting and to remain in or near the cafeteria during the evening hours actually affected the results of the election.[5/] We cannot be sure of how many prospective voters Vega may have spoken to during his several jaunts through the die casting department or in the hall near the power press and machine departments, or what was said during the conversations while he was wearing a button identifying himself as an official

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5/ As pointed out above, the final results were so close that a shift of only two votes could have been decisive. This is a factor which must be considered. N. L. R. B. v Skelly Oil Co., 8 Cir., 1973, 82 LRRM 2641, 2645, N. L. R. B. v. Overland Hauling, Inc., 5 Cir., 1972, 461 F. 2d 944, 80 LRRM 2728.

representative of the National Labor Relations Board.[6] It should be sufficient that Vega's conduct raised enough doubts as to the integrity of the Board election as "to destroy confidence in the Board's election process" and impugn the election standards the Board seeks to maintain.[7] Election results clouded to such a degree should not be permitted to stand.

CONCLUSION

In view of all the foregoing, the Employer submits that the Regional Director's Supplemental Decision should be reversed and either the election should be set aside or a hearing be ordered for the purpose of taking testimony under oath concerning Vega's conduct as set forth above.

Dated, Boston, Massachusetts, May 29, 1973.

Respectfully Submitted
The Newton-New Haven Company

by /s/ Sidney A. Coven
Lepie & Coven, its Attorneys
10 Tremont Street
Boston, Massachusetts 02108

* * * * *

6/ It cannot be expected that many employees, inexperienced in Board procedures, would understand the exact significance of the Board Observer button, except that it signified that Vega was acting in some official capacity as part of the Board' election process.

7/ Athbro Precision Engineering Corp., 166 NLRB 966, reversed I.U.E. v. N.L.R.B., W.S.D.E., Dist. of Col., 67 LRRM 2361. But see N.L.R.B. v. Athbro Precision Eng. Corp., 1 Cir., 1970, 78 LRRM 2355.

ORDER DENYING EMPLOYER'S REQUEST FOR REVIEW

TELETYPE

DATE: JUNE 12, 1973
TIME: 9:10 a. m.

TO: NLRB, BOSTON
FROM: ROBERT VOLGER
NLRB, WASHINGTON

RE: NEWTON NEW HAVEN COMPANY, 1-RC-12,519

EMPLOYER'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVE IS HEREBY DENIED AS IT RAISES NO SUBSTANTIAL ISSUES WARRANTING REVIEW. BY DIRECTION OF THE BOARD.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION

In the Matter of

THE NEWTON-NEW HAVEN COMPANY

and

UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO, CLC

Case No. 1-CA-9227

COMPLAINT AND NOTICE OF HEARING

It having been charged by United Rubber, Cork, Linoleum & Plastic Workers of America, AFL-CIO, CLC, 73 Tremont Street, Room 520, Boston, Massachusetts 02108 (herein called Union) that The Newton-New Haven Company, 6 Middletown Avenue, North Haven, Connecticut 06473 (herein called Respondent) has been engaging in and is engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et seq. (herein called the Act) the General Counsel of the National Labor Relations Board (herein called the Board), on behalf of the Board, by the undersigned Regional Director, issues this Complaint and Notice of Hearing pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended.

1. The Charge in this proceeding was filed by the Union on July 19, 1973 and a copy thereof served upon Respondent on July 19, 1973.

2. Respondent is and has been at all times material herein a corporation duly organized under and existing by virtue of the laws of the State of Connecticut.

3. At all times herein mentioned, Respondent has maintained its principal office and place of business at 6 Middletown Avenue in the City of North Haven, and State of Connecticut (herein called the North Haven plant), and is now and continuously has been engaged at said plant in the manufacture, sale and distribution of metal die castings and related products.

4(a) Respondent in the Course and conduct of its business causes and continuously has caused at all times herein mentioned, large quantities of metal used by it in the manufacture of metal die castings to be purchased and transported in interstate commerce from and through various States of the United States other than the State of Connecticut, and causes, and continuously has caused at all times herein mentioned, substantial quantities of metal die castings to be sold and transported from said plant in interstate commerce to States of the United States other than the State of Connecticut.

(b) Respondent annually receives goods valued in excess of $50,000 at its North Haven plant shipped directly from points located outside the State of Connecticut.

5. The aforesaid Respondent is and has been engaged in commerce within the meaning of the Act.

6. The Union is a labor organization within the meaning of Section 2(5) of the Act.

7. At all times material herein, the following named person occupied the position set opposite his name and has been and is now an agent of the Respondent, acting on its behalf, and is a supervisor within the meaning of Section 2(11) of the Act.

William Newton President

8. All production and maintenance employees including regular part-time maintenance employees, hot inspector clerks, production clerks, inspectors, stockroom clerks, timekeepers and group leaders, but excluding quality control clerk, draftsmen, time study employees, office clerical employees, professional employees, guards and supervisors as defined in Section 2(11) of the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

9. On April 13, 1973, a majority of the employees of Respondent in the unit described above in Paragraph 8, by a secret ballot election conducted under the supervision of the Regional Director for the First Region.
of the Board, designated and selected the Union as their representative for the purposes of collective bargaining with Respondent, and on May 18, 1973, said Regional Director certified the Union as the exclusive collective-bargaining representative of the employees in the said unit.

10. At all times material herein the Union has been the representative for the purposes of collective bargaining of a majority of the employees in the said unit and, by virtue of Section 9(a) of the Act, has been and is now the exclusive representative of all the employees in the said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

11. On or about June 15, 1973, the Union requested Respondent to bargain collectively in respect to rates of pay, wages, hours of employment or other conditions of employment with the Union as the exclusive representative of all the employees of Respondent in the unit described above in Paragraph 8.

12. On or about July 2, 1973, and at all times thereafter, Respondent did refuse and continues to refuse to bargain collectively with the Union as the exclusive representative of all the employees in the unit described above in Paragraph 8, in that it has failed to and refused to and continues to refuse to meet with and/or bargain with the Union.

13. By the acts described above in Paragraph 12 Respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

14. By the acts described above in Paragraph 12 and by each of said acts, Respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act and thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

15. The activities of Respondent, described above in Paragraph 12, occurring in connection with the operations of Respondent, described above in Paragraphs 3 and 4 have a close, intimate, and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

16. The acts of Respondent, described above, constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 17th day of September, 1973 at 11 o'clock in the forenoon, Eastern Daylight Saving Time, at the Aldermanic Chambers, City Hall, 161 Church Street, New Haven, Connecticut, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations

Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof and that unless it does so, all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board. Immediately upon the filing of its Answer, Respondent shall serve a copy thereof on each of the other parties.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the First Region, on this 10th day of August, 1973, issues this Complaint and Notice of Hearing against The Newton-New Haven Company, Respondent herein.

/s/ Robert S. Fuchs
Robert S. Fuchs, Regional Director
National Labor Relations Board
First Region
Boston, Massachusetts 02114

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The hearing will be conducted by an Administrative Law Judge of the National Labor Relations Board. He will preside at the hearing as an independent, impartial trier of the facts and the law and his decision in due time will be served on the parties. His headquarters are either in Washington, D. C., or San Francisco, California.

At the date, hour, and place for which the hearing is set, the Administrative Law Judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clear-cut; or he may, on his own initiative, conduct such a conference. He will preside at any such conference, but he may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record -- for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the Administrative Law Judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or to make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted either by way of stipulation or motion, to the Administrative Law Judge for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Administrative Law Judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Administrative Law Judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Administrative Law Judge will allow an automatic exception to all adverse rulings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the close of hearing. In the event such copy is not

submitted, and the filing thereof has not for good reason shown been waived by the Administrative Law Judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Administrative Law Judge may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Administrative Law Judge who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Administrative Law Judge will be considered unless received by the Chief Administrative Law Judge in Washington, D.C., (or in the cases under the San Francisco, California branch office of the Division of Judges, the Presiding Judge in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all other parties, and proof of such service furnished to the Chief Administrative Law Judge or Presiding Judge as the case may be. All briefs or proposed findings filed with the Administrative Law Judge must be submitted in

triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Administrative Law Judge will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Administrative Law Judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Administrative Law Judge's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly in Section 102. 46 and following sections. A summary of the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Administrative Law Judge will afford reasonable opportunity during the hearing for discussions between the parties if adjustment appears possible, and may himself suggest it.

* * * * *

RESPONDENT'S ANSWER

The Newton-New Haven Company, hereinafter called the Respondent, by its undersigned Attorneys, answering the Complaint herein issued on August 10, 1973 by the Regional Director for the First Region, alleges as follows:

(1) Respondent admits all the allegations contained in the paragraphs of the Complaint numbered 1, 2, 3, 4, 5, 6, 7, 8, 11 and 12.

(2) With respect to paragraph 9 of the Complaint, Respondent admits that an election was held on April 13, 1973 at which a majority of the votes counted were cast in favor of the Union, but denies that said election was a valid election and alleges that the Board erred in refusing to set aside the said election because of objectionable conduct engaged in by the Union and or its Representatives, as set forth in Respondent's Objections to said election and its Exceptions to the Regional Director's Supplemental Decision and Certification of Representative.

(3) Respondent denies each and every allegation contained in the paragraphs of the Complaint numbered 10, 13, 14, 15 and 16.

Dated Boston, Massachusetts, August 22, 1973

Sidney A. Coven
Lepie & Coven
Attorneys for Respondent
10 Tremont Street
Boston, Massachusetts 02108

* * * * *

MOTION FOR SUMMARY JUDGMENT

Now comes Roy M. Schoenfeld, Counsel for the General Counsel in the above entitled matter, and, pursuant to Section 102.24 of the Rules and Regulations of the National Labor Relations Board (hereinafter called the Board), Series 8, as amended, files this Motion for Summary Judgment and in support of said Motion states the following:

1. On January 18, 1973, United Rubber, Cork, Linoleum & Plastics Workers of America, AFL-CIO, CLC (hereinafter called the Union), filed a Petition in Case No. 1-RC-12,519 to represent certain employees of the Newton-New Haven Company (hereinafter called the Respondent) at its facility in North Haven, Connecticut. A copy of said Petition is attached hereto and marked Exhibit 1.

2. On March 14, 1973, the Regional Director for the First Region of the Board issued a Decision and Direction of Election which ordered that an election be conducted among certain employees of the Respondent at its North Haven, Connecticut facility. The unit contained in said Decision found to be appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the National Labor Relations Act, as amended (hereinafter called the Act) is as follows:

> "All production and maintenance employees including regular part-time maintenance employees, hot inspector clerks, production clerks, inspectors, stockroom clerks, timekeepers and group leaders, but excluding quality control clerk, draftsmen, time study employees,

office clerical employees, professional employees, guards and supervisors as defined in the Act."

A copy of said Decision and Direction of Election is attached hereto and marked Exhibit 2.

3. On April 13, 1973, the employees of Respondent in the unit described in Paragraph 2 above, by secret ballot election conducted under the supervision of the Regional Director for the First Region, acting as an agent of the Board, voted to determine whether the Union was to be selected as their representative for the purpose of collective bargaining with Respondent. A copy of the Tally of Ballots cast in said election showing 87 votes cast for the Union and 82 votes cast against the Union, with 2 challenged ballots, is attached hereto and marked Exhibit 3.

4. On April 19, 1973, the Respondent filed timely Objections to Conduct Affecting the Results of the Election. Said Objections were duly investigated and Respondent participated in said investigation. A copy of said Objections is attached hereto and marked Exhibit 4.

5. On May 18, 1973, the Regional Director for the First Region issued his Supplemental Decision and Certification of Representative overruling the aforementioned Objections and certifying the Union as exclusive bargaining representative of the employees of Respondent in the appropriate unit described above in Paragraph 2. A copy of said Supplemental Decision and Certification of Representative is attached hereto and marked Exhibit 5.

6. At all times since April 13, 1973, and continuing to date, the Union has been the representative for the purpose of collective

bargaining of a majority of the employees in the unit described above in Paragraph 2 and, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive bargaining representative of all the employees in the said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other terms and conditions of employment.

7. The Respondent filed a Request for Review of the Regional Director's Supplemental Decision and Certification of Representative (styled Employer's Exceptions to Regional Director's Supplemental Decision and Certification of Representative) with the Board on May 29, 1973, which was denied on June 12, 1973 as raising no substantial issues warranting review. A copy of the Request for Review and the denial of same are attached hereto and marked Exhibit 6(A) and 6(B), respectively.

8. The Union, by letter dated June 15, 1973, requested Respondent to meet with it as soon as practicable for the purpose of collective bargaining for all of Respondent's employees in the unit described above in Paragraph 2. A copy of said letter is attached hereto and marked Exhibit 7.

9. Respondent, by letter dated July 2, 1973, signed by its Attorney, acknowledged receipt of the Union's letter of June 15, 1973 and indicated that it was the position of the Respondent that the Board's certification of the Union was improper and without legal justification and, therefore, Respondent refused to recognize the Union as the exclusive bargaining representative for the employees of Respondent in question. A copy of said letter is attached hereto and marked Exhibit 8.

10. On July 19, 1973, the Union filed the charge in Case No. 1-CA-9227, alleging that since on or about July 2, 1973

Respondent had refused to bargain with the Union. A copy of said Charge is attached hereto and marked Exhibit 9.

11. On August 6, 1973, Respondent's attorney indicated telephonically to an agent of the Board's First Region that Respondent desired to challenge the Board's certification and, hence, would not meet with the Union.

12. On August 10, 1973, the Regional Director for the First Region issued a Complaint and Notice of Hearing in this matter alleging that Respondent had refused to bargain with the Union in violation of Section 8(a)(1) and (5) of the Act. A copy of said Complaint is attached hereto and marked Exhibit 10.

13. On August 22, 1973, Respondent filed its Answer to the aforementioned Complaint, admitting the allegations set forth in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 11, 12 and that portion of Paragraph 9 which alleges that an election was held on April 13, 1973 at which a majority of the votes counted were cast in favor of the Union. In its Answer, Respondent denies the remaining portions of Paragraph 9 and each and every allegation of Paragraphs 10, 13, 14, 15 and 16. A copy of said Answer is attached hereto and marked Exhibit 11.

14. By way of explaining its denial of a portion of the allegations in Paragraph 9 (and, obviously, its denial of Paragraph 10) of the Complaint, Respondent, in Paragraph (2) of its Answer, adds that the Board erred in refusing to set aside the election because of objectionable conduct engaged in by the Union and/or its Representatives, as set forth in Respondent's Objections to said election and its Request for Review.

15. The Board and Courts have consistently held that issues which were or could have been raised and determined by the Board in a prior representation case cannot be relitigated in a subsequent unfair labor practice proceeding, absent newly discovered evidence or previously unavailable evidence or special circumstances. Pittsburgh Plate Glass Co. v. N. L. R. B., 313 U. S. 146; Metropolitan Life Insurance Co., 142 NLRB 491; Porta-Kamp Mfg. Co., 189 NLRB No. 137; Great Dane Trailers, Inc., 191 NLRB No. 8; Hertz Corp., 190 NLRB No. 132. Respondent does not contend that there is any newly discovered evidence since the Board's certification or evidence unavailable at the time of the representation proceeding or that there are any special circumstances. Instead, Respondent contends only that the Board's original determination that the Union was validly selected as the exclusive collective bargaining representative of the employees of Respondent in the unit described above in Paragraph 2 was erroneous.

WHEREFORE, Counsel for the General Counsel respectfully moves:

1. That the Board find that a majority of the employees in the unit described above in Paragraph 2 by a valid secret ballot election conducted under the supervision of the Regional Director for the First Region for the Board, designated or selected the Union as their representative for the purpose of collective bargaining and that at all times since the election on April 13, 1973 the Union has been the exclusive representative for the purpose of collective bargaining of the majority of the employees in the said unit;

2. That on or about July 2, 1973, and at all material times thereafter, Respondent did refuse and continues to refuse to

bargain collectively with the Union as the exclusive representative of all of its employees in the unit described above in Paragraph 2;

3. That all of the material allegations of the Complaint, which Respondent has in effect admitted, be found to be true;

4. That Respondent be found by the Board to have violated Section 8(a)(1) and (5) of the Act without the taking of evidence in support of the allegations of the Complaint; and

5. That this Motion be ruled upon as expeditiously as possible so that in the event the Motion is granted, the necessity for hearing will be eliminated.

Dated at Boston, Massachusetts this 30th day of August, 1973.

Respectfully submitted,

/s/ Roy M. Schoenfeld
Roy M. Schoenfeld
Counsel for the General Counsel
National Labor Relations Board
First Region
Boston, Massachusetts

* * * * *

RESPONDENT'S ANSWER TO GENERAL COUNSEL'S MOTION FOR SUMMARY JUDGMENT

Respondent herein, by its undersigned Attorneys, in answer to General Counsel's Motion for Summary Judgment dated August 30, 1973,[1/] alleges that the Regional Director's Supplemental Decision and Certification of Representative dated May 18, 1973 was improper in that his decision was based on an incomplete and erroneous summary of the evidence produced by Respondent in support of its Objection numbered 4 and further because his legal conclusions with respect to the actions of Union Observer Juan Vega during the course of the election held on April 13, 1973 were likewise erroneous. Respondent further alleges that the Board's denial on June 12, 1973 of Respondent's Exceptions to the said Supplemental Decision and Certification of Representative was erroneous and improper for the same reasons and for the additional reason that the Board refused Respondent's request for a hearing at which testimony concerning Vega's conduct should be taken under oath and at which Respondent offered to prove the facts set forth below.

BACKGROUND AND FACTS

The election herein was conducted on April 13, 1973 among Respondent's production and maintenance employees, totalling approximately 183 eligible voters. The Tally of Ballots showed

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1/ Erroneously shown as August 4, 1973 in the Board's Order Transferring Proceeding To The Board and Notice To Show Cause.

87 votes for the Union, 82 against the Union and 2 challenged ballots. [2]

The election was held between the hours of 2:00 p. m., and 4:30 p. m. and 10:00 p. m. and 11:15 p. m. At the request of the Board Agent in charge of the election, Respondent and the Union each designated one Observer for the purpose of notifying the various foremen to release their employees to go to the Company cafeteria (where the election was being held) to cast their ballots in accordance with a predetermined schedule. The Union Observer designated for this purpose was Juan Vega. Both Vega and the Company Observer were given official Board badges to wear during the election, which they wore throughout the election hours, and were instructed by the Board Agent not to talk to anyone in the course of their duties other than the departmental foremen. Their instructions were to tell the foremen only that it was time for their employees to vote and not to engage in any other conversations.

Testimony submitted by Respondent, supported by sworn affidavits given to the Regional Office representative who made the investigation of the Objections, shows that on three different occasions during the afternoon voting [3] when Vega and the Company

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[2] A shift of two "yes" votes would have affected the results of the election and would have made the challenged ballots determinative.

[3] The first occasion was some time between 2:00 and 2:30 p. m., and lasted about five minutes, the second about 2:30 p. m., and the third about 3:30 p. m., lasting somewhere around a "minute or so" or three minutes. The shift change occurred about 3:00 p. m. There are approximately 20 to 25 employees in the department on each shift.

Observer came to the Die Casting department in the course of their election duties, Vega violated his instructions and went unaccompanied through the department engaging in conversations with various employees most of whom had not yet voted. [4] He continued to engage in this activity despite requests by the foreman and the Company Observer that he abide by the Board Agent's instructions and cease conversing with employees.

During the evening voting hours, Vega engaged in a conversation outside the cafeteria with an employee who had already voted. The Board Agent in charge of the election directed the employee to leave and Vega to cease engaging in such conversation. The employee and Vega walked down the hall, still conversing, and then Vega remained in the hall near the power press and machine departments. [5] The Board Agent made at least two requests to Vega to return to the cafeteria. After each such request, Vega walked back toward the cafeteria and then again wandered down the hall toward the power press and machine departments. Finally, after a direct order from the Board Agent to remain seated in the cafeteria, Vega did so.

ARGUMENT

The Board has long been conscious of its obligation to safeguard its elections from conduct which inhibits the free choice of

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[4] Respondent has no knowledge of what was said during such conversations.

[5] The witness was unable to state whether Vega engaged in any other conversations while he was in that location because he was then not in sight. It is therefore impossible to know whether at that time or later he had any conversation with prospective voters who might have been enroute to the cafeteria to vote.

the voters and has been "especially zealous in preventing intrusions upon the actual conduct of its elections." Clausen Baking Company, 134 NLRB 111, 112. In recent years such zealousness has resulted in the Board's enunciation of a new rule that conversations, regardless of their content, held with voters waiting in line to vote, or in the polling area, by a representative of one of the parties (Milchem, Inc., 170 NLRB 362; Star Expansion Industries Corp., 170 NLRB 364) or by one of the parties' observers (General Dynamics Corporation, 181 NLRB 874, 875) constituted conduct which requires the setting aside of the election. As the Board has stated in Rebmar, Inc., 173 NLRB 1434, the Board "has a responsibility to protect its processes against abuse or undersirable use" and "the Board should guard against having its prestige put to . . . possible abuse."

Here neither Respondent nor the Board can be sure whether or not Vega's continued and deliberate disregard of the Board Agent's instructions not to converse with employees while notifying their foreman to release them for voting and to remain in or near the cafeteria during the evening hours actually affected the results of the election.[6/] We cannot be sure of how many prospective voters Vega may have spoken to during his several jaunts through the die casting department or in the hall near the power press and machine departments, or what was said during the conversations while he was wearing a button identifying himself as an official

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6/ As pointed out above, the final results were so close that a shift of only two votes could have been decisive. This is a factor which must be considered. N. L. R. B. v. Skelly Oil Co., 8 Cir., 1973, 82 LRRM 2641, 2645; N. L. R. B. v Overland Hauling, Inc., 5 Cir., 1972, 461 F. 2d 944, 80 LRRM 2728.

representative of the National Labor Relations Board.[7] It should be sufficient that Vega's conduct raised enough doubts as to the integrity of the Board election as "to destroy confidence in the Board's election process" and impugn the election standards the Board seeks to maintain.[8] Election results clouded to such a degree should not be permitted to stand.

CONCLUSION

In view of all the foregoing, Respondent submits that the Board erred in failing to reverse the Regional Director's Supplemental Decision and Certification of Representative and in failing either to set aside the results of the election or to order that a hearing be held for the purpose of taking testimony under oath concerning Vega's conduct as set forth above. Respondent accordingly requests that General Counsel's Motion for Summary Judgment be denied.

Dated Boston, Massachusetts, October 5, 1973

Respectfully Submitted
The Newton-New Haven Company

By /s/ Sidney A. Coven
Lepie & Coven, its Attorneys
10 Tremont Street
Boston, Massachusetts 02108

* * * * *

7/ It cannot be expected that many employees, inexperienced in Board procedures, would understand the exact significance of the Board Observer button, except that it signified that Vega was acting in some official capacity as part of the Board's election process.

8/ Athbro Precision Engineering Corp., 166 NLRB 966, reversed I.U.E. v. N.L.R.B., U.S. D.C., Dist. of Col., 67 LRRM 2361. But see N.L.R.B. v. Athbro Precision Eng. Corp., 1 Cir., 1970, 78 LRRM 2355.

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATONAL LABOR RELATIONS BOARD,

Petitioner,

v.

THE NEWTON-NEW HAVEN COMPANY,

Respondent.

No. 74-1286

CERTIFICATE OF SERVICE

I hereby certify that I have served by hand (by mail) two copies of the Appendix in the above-entitled case, on the following counsel of record, this 15th day of April 1974.

Sidney A. Coven, Esq.,
Lepie and Coven
10 Tremont Street
Boston, Massachusetts 02108

Elliott Moore, Esq.,
Deputy Associate General Cousnel
National Labor Relations Board
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Subscribed and Sworn to before me this